

Decision 04-03-020 March 16, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lodi Gas Storage, L.L.C. for an Order of Exemption from Section 851 of the Public Utilities Code, Pursuant to Section 853, For the Assignment of Accounts Receivable to Securitize a Short-Term Working Capital Line of Credit.

Application 04-01-039
(Filed January 29, 2004)

**OPINION ON EXEMPTION FROM
PUBLIC UTILITIES CODE SECTION 851**

I. Summary

This decision grants the request of Lodi Gas Storage L.L.C. (LGS) for an exemption from the requirements of Pub. Util. Code § 851¹ for the sole purpose of assigning its accounts receivable to secure a short-term (less than twelve months) working capital line of credit in the amount of \$5 million and assigning future accounts receivable of up to a \$10 million ceiling for securing a revolving line of credit through loan agreements with terms up to three years. This authority is being granted pursuant to § 853(b).

II. Background

LGS, a Delaware limited liability company qualified to transact business in California, was granted a Certificate of Public Convenience and Necessity (CPCN) to construct and operate gas storage facilities pursuant to Decision

¹ All citations are to the Public Utilities Code unless otherwise indicated.

(D.) 00-05-048. LGS was assigned corporate identification number U-912-G, which should be included in the caption of all filings made with this Commission. Its principal place of business is 14811 St. Mary's Lane, Suite 150, Houston, Texas.

LGS operates an underground natural gas storage facility approximately 5.4 miles northeast of Lodi in San Joaquin County. This Lodi facility is capable of injecting and withdrawing gas several times within a day enabling LGS to tailor the Facility's operations to the injection and withdrawal requirements of a broad segment of the market, including gas-fired electric generation. These services are provided to customers throughout California at market-based rates.

III. Proposed Transaction

LGS has negotiated a \$5 million short-term loan agreement, the details of which are filed under seal as Exhibit 3. LGS is also contemplating establishing a revolving line of credit through additional loan agreements with a commercial bank, for terms extending up to three years.

The purpose of the loan agreements is to provide working capital to LGS at any time during its operating cycle and to provide LGS the ability to issue letters of credit to vendors and prospective customers.

LGS intends to assign its accounts receivable as part of the loan agreements so that it may obtain a short-term loan and a revolving line of credit under favorable terms. Absent such assignment and because LGS has been in operation for only two-years and generates all of its revenue from market-based rates, LGS would be required to pay 300 to 500 basis points (3% to 5%) more for short-term money and be subject to tighter operating provisions and covenants from the lender.

IV. Discussion

Because the terms of the short term loan agreement and future loan agreements will provide for LGS to encumber its accounts receivable, LGS must obtain Commission authority pursuant to Article 6 of Chapter 4 of Part 1 of Division 1 of the Pub. Util. Code (§§ 851 through 856). Specifically, § 851 provides:

No public utility... shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or part of its...line, plant, system or other property necessary or useful in the performance of its duties to the public....without having first secured from the commission an order authorizing it so to do.

By its application, LGS seeks an exemption from the requirements of § 851 with regard to the creation of a \$5 million security interest in its accounts receivable as part of its proposed short-term working capital line of credit. LGS also seeks an exemption from the requirements of § 851 from future accounts receivable encumbrances of up to a \$10 million ceiling for loan agreements with terms up to three years.²

In support of its § 851 exemption request LGS stated that the Commission has previously granted nondominant interexchange carriers and Red & White Ferries an exemption from § 851.³ In granting those exemptions the Commission observed that in a competitive environment no public purpose is served by overseeing issuance of stocks, bonds, or other forms of ownership or

² In the alternative to the exemptions, LGS seeks approval of its application pursuant to § 851.

³ See for example D.99-06-036 dated June 10, 1999, 25 CPUC2d 459, and 18 CPUC2d 381.

indebtedness. While such oversight may protect one competitor from unwise business decisions, the delay inherent in an approval process may also cause another competitor to fail to capture fleeting but advantageous opportunities. The Commission concluded in those proceedings that so long as the public has alternative service providers, regulating the financial structure of the utility is not necessary to protect the public interest.

The Legislature has provided the Commission authority to exempt public utilities from §§ 851 through 856 requirements where the specific transaction in question will not implicate the utility's ongoing ability to perform its public utility obligations. Specifically, § 853(b) provides for the Commission to exempt public utilities from the provision of §§ 851 through 856 if the Commission finds "that the application thereof to such public utility...is not necessary in the public interest."

In 1992, the California Legislature formally expressed its objective of creating competition for natural gas storage services. The Legislature passed and the Governor approved Assembly Bill (AB) 2744 (Chapter 1337 of the California Statue of 1992, which is uncodified), which made certain findings about gas storage and urged certain action by the Commission. The Commission has construed AB 2744 as not requiring, but urging, Commission action in the gas storage area.⁴

In the Gas Storage Decision (48 CPUC2d 107) the Commission adopted a "let the market decide" policy for gas storage. The Commission stated that it should not test the need for new gas storage projects on a resource-planning

⁴ 48 CPUC2d 107 at 126 (1993).

basis, so long as all of the risk of the unused new capacity resides with the builders and users of the new facility.

The Commission found in granting LGS its CPCN in 2000 that, even though there were only three market suppliers of gas storage services, the record did not provide evidence “that LGS currently possesses significant market power in the California gas storage market.”⁵ This was, of course, early in the development of the company. However, the record has not changed on this subject. In addition, LGS operates at the complete risk of its shareholders under market-based rates. A security interest in its accounts receivable will be used solely to provide working capital to LGS. It is clear that it is not necessary to impose § 851 regulation of such financial transactions to ensure the ongoing ability of LGS to perform its public utility obligations. We therefore find that it would be in the public interest to grant an exemption to LGS from § 851 oversight for the specific financial purpose identified in the application.

V. Procedural Matters

LGS requested that this matter be categorized as ratesetting and states that no hearings are necessary. By Resolution ALJ 176-3128, dated February 11, 2004, the Commission preliminary determined that this was a ratesetting proceeding and that no hearings were expected.

A copy of the application was mailed to all appearances in the proceeding wherein LGS received Commission authorization for a CPCN to construct and operate gas storage facilities, Application 98-11-012. Notice of the application appeared in the Commission’s February 6, 2004 Daily Calendar. There is no

⁵ Finding of Fact No. 37, D.00-05-048, dated May 18, 2000.

objection to the ratesetting categorization and there were no protests to this application. A hearing is not necessary.

VI. Comment Period

This is an uncontested matter in which the decision grants the relief requested. Therefore, the otherwise applicable 30-day period for public review and comment is being waived pursuant to Pub. Util. Code § 311(g)(2).

VII. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Michael J. Galvin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The application was filed on January 29, 2004, and appeared in the Commission's Daily Calendar on February 6, 2004.
2. LGS was assigned corporate identification number U-912-G.
3. LGS operates at the complete risk of its shareholders under market-based rates.
4. A security interest in its accounts receivable will be used solely to provide working capital to LGS.
5. It is not necessary to impose § 851 regulation of such financial transactions to ensure the ongoing ability of LGS to perform its public utility obligations.
6. It would be in the public interest to grant an exemption to LGS from § 851 oversight for the specific financial purpose identified in the application.
7. The Commission has authority to exempt public utilities from §§ 851 through 856.
8. There is no opposition to this application.
9. LGS operates at the complete risk of its shareholders.

Conclusions of Law

1. The application should be granted.
2. Information placed under seal should remain sealed, because if disclosed, it would provide competitors an insight of LGS's financing position and strategy.
3. The corporate identification number assigned to LGS should be included in the caption of all filings made with this Commission.
4. This decision should be effective immediately so that LGS can enter into a short-term loan and line of credit immediately.

O R D E R

IT IS ORDERED that:

1. Lodi Gas Storage L.L.C. (LGS) is granted an exemption from the requirements of Pub. Util. Code § 851 for the sole purpose of assigning its accounts receivable to secure a short-term working capital line-of-credit in the amount of \$5 million and assigning future accounts receivable of up to a \$10 million ceiling to secure a revolving line of credit through loan agreements with terms up to three years. LGS shall not assign its accounts receivable for any other purpose without Commission approval pursuant to Pub. Util. Code § 851. Any debt issue by LGS pursuant to this decision shall be limited to the amounts authorized by this Ordering Paragraph.
2. LGS shall include its assigned corporate identification number U-912-G in the caption of all filings made with this Commission.

3. All information placed under seal shall remain sealed for a period of two-years from the effective date of this order except upon further order or ruling of the Commission or Administrative Law Judge then designated as the Law and Motion Judge. If LGS believes that further protection of sealed information is needed beyond two years after the effective date of this order. It may file a motion stating the justification for further withholding of the sealed information from public inspection, or for such other relief as the Commission may provide. This motion shall be filed no later than 30 days before the expiration of this ordering paragraph.

4. Application 04-01-039 is closed.

This order is effective today.

Dated March 16, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners